



<https://doi.org/10.22363/2313-2302-2024-28-3-872-884>


EDN: WQOIQF

Research Article / Научная статья

The Ethics of Conflict in Changing World

Alexey Z. Chernyak  , Marina L. Ivleva 

RUDN University, Moscow, Russia

 cherniak-az@rudn.ru

Abstract. In the study, conflict is understood mainly as the actions aimed at harming the opposing side, since only in this sense is war considered as an object of moral assessments and recommendations. The authors address the problem of the transformation of the role of the Theory of Just War (JWT), which is currently the dominant ethics of war and defines the essence of the difference between fair and unfair war. The study highlights the problems of using JWT, analyzes more detailly the problem of reconciling JWT with the changing realities of war. The authors consider and criticize N. Fotion's solution, according to which two different modifications of JWT instead of one are used – JWT for regular and irregular wars. The most obvious alternative solutions were analyzed and the authors conclude that the least problematic solution is to reject the identification of morally justified wars with the fair ones and to assume the existence of morally justified wars that are not fair. This allows to interpret actions that do not meet moral requirements, but have some moral justification in special situations, as exceptions, not because in these cases they cease to be morally wrong or fair, but because the circumstances that make them morally justified are such that strict observance of the general rule creates too high a risk of even worse moral consequences. By this assumption another contradiction is resolved: aggression may remain a form of injustice, but in some cases it may have a moral justification. The solution proposed by the authors only sets a promising direction for solving the problem. At the same time, it is still important to minimize the risk of situations in which it will be necessary to choose between justice and the moral justification of war.

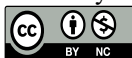
Keywords: just war theory, conditions of *ius ad bellum*, conditions of *ius in bello*, regular wars, irregular wars, moral justification

Article history:

The article was submitted on 29.03.2024

The article was accepted on 01.07.2024

© Chernyak A.Z., Ivleva M.L., 2024




This work is licensed under a Creative Commons Attribution 4.0 International License
<https://creativecommons.org/licenses/by-nc/4.0/legalcode>

For citation: Chernyak A.Z., Ivleva M.L. The Ethics of Conflict in Changing World. *RUDN Journal of Philosophy*. 2024;28(3):872–884. <https://doi.org/10.22363/2313-2302-2024-28-3-872-884>

Этика конфликта в меняющемся мире

А.З. Черняк  , М.Л. Ивлева 

Российский университет дружбы народов, Москва, Россия

cherniak-az@rudn.ru

Аннотация. В исследовании конфликт понимается главным образом как действия одной из сторон конфликта, направленные на причинение вреда противоборствующей стороне, поскольку только в этом смысле война рассматривается как объект моральных оценок и рекомендаций. Авторы затрагивают проблему трансформации роли Теории справедливой войны (JWT), которая в настоящее время является доминирующей этикой войны и определяет суть различия между справедливой и несправедливой войной. В исследовании отмечаются проблемы, с которыми сталкивается использование JWT, более подробно анализируется проблема согласования JWT с меняющимися реалиями войны. Авторы рассматривают и критикуют решение, предложенное известным теоретиком JWT Н. Фоушином, согласно которому предлагается использовать две разные модификации JWT вместо одной – JWT для регулярных войн и JWT для нерегулярных войн. Также проанализированы наиболее очевидные альтернативные решения, и авторы приходят к выводу, что наименее проблемным решением является отказ от отождествления морально оправданных войн со справедливыми и допущение существования морально оправданных войн, которые не являются справедливыми в строгом смысле этого слова. Это позволяет, по мнению авторов, интерпретировать действия, которые не отвечают моральным требованиям, но имеют некоторое моральное оправдание в особых ситуациях как исключения, не потому, что в этих случаях они перестают быть морально неправильными или справедливыми, а потому, что обстоятельства, которые делают их морально оправданными, таковы, что строгое соблюдение общего правила создает слишком высокий риск еще худших моральных последствий. Признавая, что справедливость войны не обязательно должна быть единственным источником ее морального оправдания, как полагают авторы, разрешается еще одно противоречие: агрессия может оставаться формой несправедливости, но в некоторых случаях она может иметь моральное оправдание. Предложенное авторами решение не лишено недостатков. Оно лишь задает многообещающее направление для решения проблемы. В то же время по-прежнему важно соблюдать следующее условие – минимизировать риск возникновения ситуаций, в которых необходимо будет выбирать между справедливостью и моральным оправданием войны.

Ключевые слова: теория справедливой войны, условия *jus ad bellum*, условия *jus in bello*, регулярные войны, иррегулярные войны, моральное оправдание

История статьи:

Статья поступила 29.03.2024

Статья принята к публикации 01.07.2024

Для цитирования: Chernyak AZ, Ivleva ML. The Ethics of Conflict in Changing World // Вестник Российского университета дружбы народов. Серия: Философия. 2024. Т. 28. № 3. С. 872–884. <https://doi.org/10.22363/2313-2302-2024-28-3-872-884>

Introduction: the problem

War rarely goes without casualties, destruction, violence, and suffering, which is why it is usually perceived as essentially evil. Nevertheless, people not only keep waging wars, but also keep finding excuses for them¹. But is excusing or justifying a war a justified moral action? And if it is, why and when?

Already in ancient Greece three main approaches to the moral assessment of war had appeared: “realism”, “pacifism”, and “Just War Theory” (JWT) are their most used contemporary names². For a pacifist, any war is evil which is better to be avoided, although some admit that war can be lesser evil in some situations (Erasmus). For a realist war is a special case, a crisis where conventional morality may not be applied; it only may be evaluated by its practical effects (e.g., how fast it can end the conflict, and how costly). However, it is JWT that became dominant ethics of war in the West in the Middle Ages, mainly due to the writings of St. Augustine and other Christian thinkers. In the nutshell that ethics claims that there are just wars, and these are morally justified, while unjust wars have no moral justification. In XVI–XVIII centuries this theory underwent significant changes but retained its status as the main ethics of war. In the most general form JWT assumes that only just wars may be started, and they must also be conducted in accordance with basic requirements of justice³.

Thinkers who made significant contributions to JWT didn’t always have similar goals in doing this. Thus, it seems that for Cicero it was important to justify the right of the Roman People and the Roman Republic to expand their empire, while for St. Augustine switching to JWT was a means of showing Christians that participation in war is not always a sin, and sometimes even pleasing to God. In this regard JWT was initially, one might say, a moral guide for a salient category of subjects – those who are of our own kind, so to speak (first Greeks, then Roman citizens, then Christians, Europeans and, finally, the so-called civilized nations). Nevertheless, from the very beginning it had the features of a universal normative

¹ In its literal use the word “war” normally refers to conflicts, struggles, and confrontations of certain types, primarily to large-scale clashes between armed belligerents which cause or may cause serious material damage. The exact meaning of this concept is not well defined, though. However, in what follows “war” will stand for sets of actions of one side of the conflict, aimed at causing significant harm to the opposing side, because only in this sense is war considered as an object of moral assessments and recommendations.

² Thus, Thucydides [1] is considered as the founder of realism, while Plato [2], Aristotle [3] and Cicero [4] basically defended JWT by distinguishing between morally justified (just) and morally unjustified (unjust) types of war. Pacifism in this era was mainly developed by Christian theologians.

³ The currently dominating version of JWT was mostly formed (or may be better to say, reinvented) in XX century. It is a secular ethics which shares some provisions with its medieval predecessors (described, in particular, in [5] and [6]), but not the grounds for their adoption.

ethics that defines the *essence* of a just war, moral justification for the use of force, etc., and prescribes norms of behavior in strict accordance with these definitions. Still, wars waged by someone somewhere (“strangers” among themselves) did not initially fall within the scope of JWT (although they could be used for illustration), and in a war waged by “one of us” against “strangers” (barbarians, pagans, savages, etc.) the values of the latter had no “say” in its moral assessment.

However, in modern world the JWT⁴ functions (or is expected to function) as both universal, and global ethics, equally applicable to all wars, regardless of their “local” characteristics. Besides, JWT does usually assume that the same war cannot be both just and unjust, even if different actors evaluate it differently⁵. This role of JWT is reflected in several international conventions, political declarations, charters, etc. But, while the theory, so to speak, crystallized in the form of a specific set of rules, military warfare continued to evolve, giving rise to new types of wars and forms of struggle. Many of them are barely compatible with some of JWT’s requirements, but at the same time fit the interests of those who wage them or benefit from that. How should one evaluate such wars? Is it right to simply recognize them as immoral and unjust in nature, or should their existence be considered as an evidence that JWT is incomplete or flawed and should be revised? Or maybe it should be abandoned altogether for the sake of some better ethics of war?

It seems obvious that if a theory did not take into account some set of evidence, then adjusting it with respect to this evidence when they arrive is the right choice (epistemically). But, on the other hand, normative theories usually are not related to observable phenomena in the same way as descriptive ones are; the existence of even many violations of a rule is usually not considered as evidence of the inadequacy of this rule as such⁶. Choosing the adjustment as the norm of reacting to new kinds of cases for a normative theory, it is too easy to make it a tool of justification of whatever wrongdoing serves current political ends. This does not meet standard expectations associated with the role of universal ethics. It is this problem, which we will further consider and which we vaguely call the problem of adaptation to new wars for JWT. And as the basis for our inquiry we choose one interesting methodological proposal formulated not long ago by one of the most prominent modern proponents of JWT.

⁴ Hereinafter, by JWT we will understand rather a specific theory that became dominant in the second half of the twentieth century, than the tradition within which different theories arose and evolved. Far from being universally followed, JWT is nevertheless respected (at least in international affairs, and to some extent), which means that its requirements are normally taken into consideration. Some of them are reflected in international conventions: for example, in Chapter 7 of the UN Charter or the Geneva Convention of 1949 [7]. As for the evolution of Western philosophy of war and JWT solid introduction may be found in [8]. Also, interesting facts about the evolution of JWT in connection with evolution of Western warfare can be found in [9].

⁵ There were, of course, exceptions to this rule. But in modern JWT the justice of war is most often interpreted as an absolute property: either the war is just or it is not (see, for example, Nick Fotion [10]); but there are also those who consider the justice of war a matter of degree (for example, Henrik Sise [11]).

⁶ Unless by rule we mean a statistical norm.

JWT and irregular wars

In modern ethics of war, it is customary to consider a war to be just only if it satisfies both two sets of conditions, which are usually called “*ius ad bellum*”, and “*ius in bello*”. The first ones determines what gives the right to war (or, in other words, what is a sufficient reason to start a war or other form of confrontation), the second determines who is entitled to do what in a war (how one is allowed to wage it), which means are permissible in war, and which should be avoided. The generally accepted conditions of *ius ad bellum* now are:

- 1) A war must be fought for a just cause, which usually means that it must have a serious cause in the form of injustice or other wrongdoing for which the one or those against whom the war is waged is guilty or responsible,
- 2) War must be initiated by legitimate authority,
- 3) War must be subordinated to the correct intention, i.e. must be aimed exclusively or mainly at correcting the evil that caused it,
- 4) It should be a last resort, which is used only when all other means of solving the problem have been exhausted,
- 5) Its expected costs must be proportional to the expected results, i.e. should not exceed the benefits expected to be obtained as a result of this war,
- 6) It must have a reasonable chance of success.

The conditions of *ius in bello* usually include the principle of differentiation, according to which one should distinguish people and objects that can, from people and objects that cannot be direct targets of military attacks⁷, and the principle of proportionality, or, in other words, symmetry, which in this case means that the harm caused in war by specific actions should not exceed the minimum needed to achieve the assigned military objectives⁸.

The application of JWT as a normative ethics faces several commonly recognized problems. One of them is the existence of wars and other types of struggle that are difficult, if not impossible, to clearly assess as just or unjust using JWT. This is usually due to the fact that their moral meaning changes along with the choice of interpretation of some conditions of the JWT. What is guilt, power, intention, good, reasonable, legitimate, etc., can be understood in different ways, which opens the way for different interpretations of the same cases⁹. The choice of

⁷ Most often, this difference in modern JWT is interpreted as a difference between combatants, i.e. those who fight in war and non-combatants, who usually include the civilian population. A clear boundary between these two categories, however, is not so easy to draw and the specific content of the principle of differentiation remains the subject of intense debate.

⁸ This list of conditions for a just war can be found, for example, in [10. P. 10–23; 11; 12], among many other sources.

⁹ See the analysis of some of these “borderline” cases for JWT in [10. P. 56–71]. It is worth noting that theoretical disagreements affecting the functioning of JWT concern not only the clarification of the above principles, but also more general questions, such as: “Are all relevant factors taken into account by this theory?”, “Should only the qualities of the war itself be taken into account in its assessment?”, “How are different conditions related to each other (for example, do the conditions of *ius ad bellum* have priority over the conditions of *ius in bello*)?”. There are also different views on

interpretation also presents a problem, at least in theory: should one, for example, choose such relevant interpretation of the JWT conditions that best suits certain pre-given meaning of the actions being evaluated? This problem echoes the problem of adapting the JWT to the new realities of warfare, which was mentioned above. As was already noted above, the JWT was developed mainly as a tool for assessing certain types of wars – those whose subject is a state or a political nation and which are conducted mainly by regular armies, i.e. those where it is possible to draw a relatively clear line between combatants and non-combatants. But there were other types of wars – people’s uprisings, guerillas, terrorism etc. In the modern world, besides, some forms of struggle that were rare in the past have become much more widespread: terrorism is perhaps the most famous representative of this type. Sometimes such wars are called irregular. Thus, N. Fotion defines a regular war as being waged by a state or nation against another state or nation, and an irregular war as being waged by a state or nation against a group or organization that is not a nation [10. P. 112–124]. But it is also customary to classify irregular wars as certain methods of conducting armed struggle (guerrilla, terrorist, etc.)¹⁰. N. Fotion believes that since the provisions of the modern JWT reflect a well-defined idea of war, finally formed in Modern times¹¹, according to which war is a competition of equal sovereigns in accordance with the rules common to both sides (the unwritten code of war) through regular armed forces, this theory does not apply to irregular wars. In fact, wars of this type usually do not meet, at least, the condition of legitimate authority, since legitimate authority is most often understood as the power of the state¹². By inapplicability in this context he means that since some of these wars look intuitively just or, at least, not clearly unjust (for example, the decentralized struggle of the people for liberation from cruel oppression), the conclusion that they are unjust, since they do not meet all the conditions of the JWT, would be simply wrong, which means the JWT is not suitable for the moral assessment of these cases. In this regard, Fotion suggests using two different versions of JWT instead: JWT for regular wars and JWT for irregular wars (hereinafter – JWTI) [10. P. 110].

The main difference between JWTI and JWT is, according to Fotion, the asymmetry of the requirements of the first: it allows for different moral restrictions for different parties in the conflict (states or nations, and groups, organizations, gangs etc. opposing them, respectively). Thus, the condition of the just cause of

how strict each condition should be. In this regard, see the analysis of some problems of JWT as normative ethics in [13. P. 303–317].

¹⁰ It should be noted that it is not easy to make a clear distinction between regular and irregular wars as well, even if we use only the two mentioned criteria: which class should, for example, sabotage activities of a regular army unit, carried out with the sanction of the army command by partisan means on enemy territory, belong? Fotion considers such cases “borderline” [10. P. 150]. But this is only one of the available ways to classify them. There are also wars in which the fight against the enemy is carried out both by regular forces on behalf of the state, and by irregular formations on their own initiative. There is also no clear rule on how to classify such cases.

¹¹ Mainly in the works of G. Grotius [14] and E. de Vattel [15].

¹² Although a state can also wage an irregular war.

JWT usually allows for a preemptive strike against the enemy only as part of self-defense or defense of the other, if it is absolutely clear that the attacked side is ready to commit an act of aggression in the near future, it is inevitable, and a preemptive strike can give the defending side an advantage. At the same time, a preventive war started due to the strengthening of a potential enemy, fears that he may attack in the foreseeable future, his aggressive rhetoric, etc., is considered unacceptable¹³. But some threats are difficult to counter effectively by strictly following the existing distinction between preemptive and preventive war; this concerns primarily the fight against terrorism. The specificity of terrorist activity is such that it is often simply impossible to prevent a terrorist attack, which makes the effectiveness of the fight against terrorism highly dependent on whether the assigned forces are allowed to strike terrorists where and when they are detected, regardless of whether they are ready in the near future to commit a terrorist act or not. The asymmetry of JWTI is manifested, in particular, in the fact that it gives the state and only the state the right to strike preventively against irregular formations, even if they have not yet committed any violent action and are not in a situation of direct preparation for such actions. Such a war, Fotion believes, is just if it meets all the conditions of the JWTI. On the other hand, this theory allows irregular forces acting on behalf of a certain oppressed group to begin an armed struggle against the state responsible for the oppression, simply by virtue of the existence of this oppression (and this responsibility) [10. P. 117].

At least two aspects of this decision raise questions. First, the asymmetry of the JWTI requirements does not logically follow from the irregular nature of the wars and conflicts it covers. It is conceivable that in some cases a preemptive strike against an enemy may be morally justified – for example, by the scale of the threat, the high likelihood of failing to counter it by acting otherwise, and the existence of a duty to prevent it. But why should the right to carry out such a blow belong only to the state? After all, it is quite possible that a state that is hostile towards a certain part of its citizens is building up its forces and preparing the ground for the genocide, and there are reasonable fears that in a situation where the threat of genocide becomes imminent, it will no longer be possible to prevent or stop it. Why, in such a situation, is it unacceptable to launch a preventive strike by irregular forces protecting this group, if such a strike is permissible in principle? But if the irregular nature of war is not a decisive reason for demanding its moral justification, if, say, we accept that preventive war can be morally justified (due to such factors as the scale of the threat, its reality and the low probability of countering it by using only authorized means of struggle) regardless of who is waging it, it is not clear why the permissible extension of the JWT for new types of wars should be the JWTI, and not some other set of norms.

¹³ E. de Vattel was one of the first who tried to establish a clear distinction between preemptive war of self-defense and aggression [15. P. 235–236, 243]. Modern versions of JWT mainly rely on the distinction between preemptive and preventive wars, introduced by M. Walzer [16. P. 81]. However, it is not always possible to clearly say whether a war is preemptive or preventive.

Secondly, in the examples that Fotion gives, it is assumed that one of the sides is fighting for a just cause, and the other represents obvious evil of one kind or another (terrorists, oppressors, etc.). Thus, the given initial conditions contribute to an asymmetric distribution of rights between the parties in the conflict. A war against terrorists who attack indiscriminately or predominantly civilians, whatever their goals, appears quite justifiable in the eyes of most ordinary people in the modern world (unless it is a disguise for aiming at more morally dubious political objectives), even if somewhere someone violates some moral or legal norms. Likewise, some forms of state oppression of a group may well justify, in the eyes of many politically neutral observers, guerrilla warfare against that state and, to some extent, even terrorism, if it is not directed against innocent civilians¹⁴. But what if the available data does not allow an unbiased observer to draw a clear conclusion about the initial moral status of the parties waging an irregular war against each other? In such a situation, is it justified to insist on the use of JWTI or another system of norms that presupposes an asymmetry of the rights of the warring parties? After all, it is not difficult to find wars that, while meeting all the conditions of JWTI (but not JWT), do not look unequivocally Just. N. Fotion lists the following conditions for a morally justified preemptive attack: the irregular group has powerful weapons, continues to stockpile weapons, recruits new members and hatches plans for violent action [10. P. 117]. But a broad popular movement opposing a totalitarian state may well meet these conditions. And in such a situation, only a consistent legalist will insist that a preventive strike on these forces by the state should be considered completely morally justified. Wouldn't it then be that by taking the decision under discussion as an example of reconciling the normative ethics of war with a changed reality, we are simply giving the state or another entity the right to solve its political problems without particularly worrying about moral norms – the right that itself does not have sufficient moral justification¹⁵?

Other solutions to the problem

The solution discussed above presupposes the following general procedure: 1) a number of wars and other conflicts A, that do not meet the conditions of JWT, but deserve moral justification for some reasons E, is selected; 2) a class of cases, including A and united by a common property x, is formed; 3) JWT is recognized as inapplicable to this class of cases, 4) an alternative system of norms or some modification of JWT for this class of cases is proposed so that it allows the members of a subclass A to be assigned moral values in accordance with E. It is quite obvious

¹⁴ Although modern political and religious terrorists often classify civilians, and sometimes the entire population of the “enemy” country, as non-innocent and even combatants.

¹⁵ Evidence of this, it seems to us, is another modification of JWT for the sake of just asymmetry that N. Fotion proposes: to assume that in cases where there is no single reason that could serve as a moral justification for war, but there are many reasons, each of which individually can not serve as such a justification, their totality can be equated to a morally justifying reason [10. P. 72]. He cites the second Gulf War as an example; but does not this modification have as its main purpose the justification of particularly this controversial war? The suspicion seems not unfounded.

that in this scheme the determining role is played by the initial reasons for including some cases that do not satisfy JWT into a separate group (A). Even if we stipulate that the subject of such metatheoretical decisions can only be some informed neutral observer (which in practice is rarely feasible anyway), this does not guarantee that different subjects will be guided by the same considerations making decisions in question. Moreover, just because the JWT does not seem to apply well to a certain class of cases united by some property *x*, it does not follow, as we have seen, that cases of the type A do not meet requirements of JWT by virtue of possessing the property *x*. All this, it seems to us, indicates that this approach is not suitable as a general principle for adapting JWT to new types of warfare.

But what are the alternatives? On the one hand, it seems that limiting the scope of JWT to wars and conflicts of certain types is quite appropriate, since it was created with them in mind; and if so, then it may be possible to apply some other method or methods of moral assessment to other types of cases. But on the other hand, if we believe that this theory defines the *essence* of the difference between just and unjust war, then by introducing for some types of wars principles for assessing their justice that are significantly different from the principles of JWT, we create a problem. Even if this is the only way to morally justify some wars which are commonly recognized as “deserving” moral justification, but JWT is the only definition of just war, we will either contradict ourselves (by concluding that these wars are also just), or we will have to admit that moral justification does not necessarily make the war strictly or literally just. There are well-known examples of moral violations which have relatively strong justification or excuse; however, if being just (and therefore aligned with JWT) is the only property considered to make a war justified, it cannot be morally justified in this framework unless it is just.

How is JWT's claim to universality justified? As far as we know, there is no special argument like the Kantian or Rawlsian thought experiment in the relevant literature, in which only this theory would have a chance to pass the test. It is usually assumed, however, that the requirements of JWT (at least when presented in general terms) would meet the least opposition from neutral users for whom conventional morality remains a regulative principle. Another argument might be to point out the practical preferability of adopting JWT as a normative ethics of war: it is assumed that otherwise we would have no effective instrument for moral regulation of this kind of interactions at all. Are these arguments conclusive reasons for accepting JWT as a universal norm? Most likely not: on both points, an attentive critic will have something to object to. But we can at least notice that some requirements of JWT (for example, the condition of a just cause) are such that replacing such a condition with an alternative (for example, justifying preventive war), even in view of the new realities of war, will most likely not look intuitively correct without additional justification¹⁶.

¹⁶ In this respect, some conditions of JWT seem more suitable to be moral universals than others. Few would argue with the fact that the justice of a war depends significantly on its goals. But the scope of such condition as that of reasonable chances of success raises more questions.

In turn, the thesis of the inapplicability of JWT to some types of wars also does not have adequate justification: from the fact that this theory does not allow us to assess a war *x* as just, and the assumption that *x* must have moral justification due to the possession of certain properties, it does not follow yet, that JWT is wrong about moral meaning of *x*. In this regard, depriving JWT of the status of a universal or at least the closest to that normative ethics of war does not seem to us a sufficiently justified solution to the problem of adapting JWT to new kinds of warfare. This, however, does not mean that JWT should not be modified: some of its conditions clearly require this (the condition of legitimate authority definitely does). Modification in this case means a new reading of the condition though; and in general, one can distinguish between legal and illegal modifications, where legality is determined by compatibility with the general wording of the condition being modified. For some cases this solution may probably work. But it is unlikely that it will be possible to find a legitimate (in the above sense) modification of the condition of, say, a just cause that would make preventive war morally permissible.

There are usually exceptions to a general rule, which, although not judged in strict accordance with the rule, are not considered as grounds for substituting this rule for another one, or for inventing another rule specifically for some class of cases involving the exception. Accordingly, another solution to the problem may be to recognize some wars that do not fully meet the requirements of JWT as simply exceptions. The problem with this approach is that if there are many cases both requiring moral assessment and poorly compatible with JWT (and this seems to be the case at the moment), then recognizing the existence of such a large number of exceptions cannot but raise doubts about the universal nature of the theory being evaluated, or even in its adequacy. One can refine this approach by combining it with a specific method of modification: ethics can both prohibit doing *x* under normal conditions and permit doing *x* in particular specially specified or implied circumstances *C*, where doing *x* has a strong (preferably moral) justification (for example). Sometimes such clauses are actually included in the description of the rules¹⁷. But if such a principle of action is made a general rule, it is necessary to explain why the fact that action *x* is justified in circumstances *C* should make it an exception to the rule, or how to determine the conditions under which the presence of a justification can make a case an exception. A separate problem with this solution is that some types of moral justification change the moral significance of the action being justified in the eyes of many. Thus, if killing for the sake of saving the other in compliance with several additional conditions is morally justified, as many believe, we can conclude from this that there are types of murder that are not evil, unjust, immoral, etc. This interpretation of exceptions seems poorly compatible with strict prohibitions on certain actions, which usually presupposes that these actions are immoral in themselves.

Another solution is to treat the justice of war as a relative parameter, where a war is just to the extent that it meets the conditions of JWT. Then a specific (for

¹⁷ See an example of such a modification of the condition of reasonable chances of success in [13. P. 108].

example, preventive) war that does not meet some, but not all, conditions of JWT, could be considered partly, although not completely, just. However, this approach leaves much to be clarified. How many JWT conditions must a war meet (and to what extent, if gradation is also appropriate in this matter) in order to be morally justified or permissible? What is the minimum amount of compliance with JWT that makes a war relatively just? Should some JWT terms have preference over others in assessing relative justice? And so on. And the more uncertainty there is in a theory, the easier it is to subordinate it to the current political needs.

We recognize that there may be no definitive answer to the question we are trying to explore; nevertheless, we think that the more reasonable solution among alternatives is that which is based on the non-equivalence of the moral admissibility and justification, and justice of war (*per se*). This move would allow to treat wars that do not meet all the requirements of JWT, but have a (relatively strong) moral justification (in the form, for example, of an existential threat or moral duty) as exceptions, not because in these cases they cease to be morally wrong or unjust, but because the circumstances, which make them morally justifiable, are such that strict adherence to the general rule in them may itself be regarded by a neutral observer as immoral or morally wrong. Then non-compliance with a moral norm (for example, preventive war) can be interpreted as the lesser of two evils, without, however, considering it as a manifestation of justice or some similar moral value.

This approach, it seems to us, could allow to solve yet another problem connected with the use of JWT as universal normative ethics. There are wars that satisfy all its conditions (at least under certain interpretation), and yet are intuitively morally controversial when considered by a politically neutral observer. This class includes mainly situations in the assessment of which the fundamental contradictions of our (let's say, Western) modern legal and ethical mindset are manifested. If, for example, a group of countries invades another country, which is not attacking or preparing to attack anyone, in order to protect the rights of some oppressed minority, then even if there is a UN sanction and the rights of the minority in question are seriously violated, peaceful methods of protecting them are not working and not expecting to work, and other conditions of JWT are met, it is still difficult to see such a war as unambiguously just, since from the point of view of international law it is still a violation of state sovereignty and, in this sense, aggression. The fundamental contradiction here is that it simultaneously accepts that aggression is a form of injustice and that it may be a morally acceptable solution in some cases. By admitting that the justice of war need not be the only source of its moral justification, we resolve this contradiction: aggression may remain a form of injustice, but in some cases it may have moral justification.

Conclusions

The solution proposed can be boiled down to the following: whatever reasons might morally justify a war, we need neither abandon the idea that this war is unjust, if not in accord with JWT, nor see it as a prove that something is fundamentally wrong with JWT as a normative ethics. Certainly, the proposition has its drawbacks.

Thus, it is not clear how exactly one should decide in which cases an unjust war can be morally justified and in which not? For example, if we allow a moral justification for preventive war in a situation where something very bad is otherwise likely to happen (from the point of view of an informed neutral observer) and the threat cannot be eliminated by conventional means, then shouldn't we also allow a moral justification of preventive war, when the probability of the threat it is aimed at eliminating is not so high, but the magnitude of this threat (the cost of an error, one might say) is very high? It is not clear what general rule can regulate this. So, we prefer to think of the solution proposed as a reasonable general approach rather than a complete set of rules. But we would add one more condition to it anyway: it seems crucial to adopt the strategy of minimization of the risk of getting into situations where it will be necessary to choose between justice and moral need. It is also important not to see the need making a war excusable or justifiable as a goal of moral efforts in assessment of wars and confrontations. Since at least in the modern world, where the sphere of justice is constantly expanding, the elimination of injustice, as it seems to us, cannot be achieved only by strict adherence to a set of ethical rules: it is necessary to minimize the conditions that systematically give rise to moral dilemmas as well. The same applies to situations that give rise to war: we cannot expect to eliminate or reduce unjust wars simply by demanding compliance with the norms of a just war, as long as there are justifiable wars that do not meet these norms; we must try, however difficult it is, to ensure that there will be no need for morally ambiguous wars as well as for unjust ones.

References / Список литературы

- [1] Thucydides A. *History of the Peloponnesian War*. Smith ChF, transl. Vol. I. Book 1. Harvard; 1956.
- [2] Plato. Alcibiades 1. In: *Selected works in 4 volumes*. Vol. 1. Moscow: Mysl' publ.; 1990. P. 220–267. (In Russian).
Платон. Алкивиад 1 // Собрание сочинений в 4 томах. Т. 1. М. : Мысль, 1990. С. 220–267.
- [3] Aristotle. Politics. In: *Works in 4 volumes*. Vol. 4. Moscow: Mysl' publ.; 1983. P. 375–644. (In Russian).
Аристотель. Политика // Сочинения в 4 томах. Т. 4. М. : Мысль, 1983. С. 375–644.
- [4] Cicero. *On Old Age, on Friendship, on Duties*. Gorenstein O, transl, comment. Moscow: Nauka publ.; 1974. (In Russian).
Цицерон. О старости, о дружбе, об обязанностях / пер. с лат. и комм. В.О. Горенштейна. М. : Наука, 1974.
- [5] St. Augustine. On the City of God. In: *Works*. Vol. 3, 4. Saint Petersburg: Aleteia publ., Kiev: UCIMM-Press publ.; 1998. (In Russian).
Августин Блаженный. О граде Божием // Творения. Т. 3. СПб. : Алетеия, Киев : УЦИММ-Пресс, 1998.
- [6] Sancti Thomas Aquinatis. *Doctoris Angelici Opera Omnia iussu impensaue Leonis XIII, cum commentariis Thomae de Vio Ciaeatani Ordinis Praedicatorum*. Vol. 8. Rome: Editori di San Tommaso; 1895.
- [7] *Human Rights: Selected International Documents*. Moscow: Yurlit publ.; 1998. P. 385–587. (In Russian).

- Права человека: сборник международных документов. М.: Юрлит, 1998. С. 385–587.
- [8] *The Ethics of War: Classic and Contemporary Readings*. Reichenberg GM, Syse H, Begby E, editors. Oxford et al: Blackwell Publishing; 2006.
- [9] McKeogh C. *The Morality of Killing in War. Innocent Civilians*. Basingstoke: Palgrave Macmillan; 2003.
- [10] Fotion N. *War and Ethics: A New Just War Theory*. London, New York: Continuum International Publishing Group; 2007.
- [11] Sise H. *Just War? On Military Power, Ethics and Ideals*. Chorkina SA, transl. Moscow: Ves' mir publ.; 2007. (In Russian).
Cuce X. Справедливая война? О военной мощи, этике и идеалах / пер. с норв. С.А. Хоркина. М.: Весь мир, 2007.
- [12] *Moral Constraints on War: Principles and Cases*. Coppieters B, Fotion N, Apresyan R, editors. М.: Gardariki publ.; 2002. (In Russian).
Нравственные ограничения войны: принципы и примеры / под ред. Б. Копитерса и др. М.: Гардарики, 2002.
- [13] *Moral Constraints on War: Principles and Cases*. Second Edition. Coppieters B, Fotion N, editors. Lanham: Rowman & Littlefield Publishers Inc.; 2008.
- [14] Grotius Hugo. *The Rights of War and Peace*. Campbell AC, transl. Washington, D.C.: M. Walter Dunne; 1901.
- [15] Vattel E. de. *The Law of Nations or the Principles of Natural Law, Applied to the Conduct and to the Affairs of Nations and of Sovereigns, The Classics of International Law*. Washington Dc: Carnegie Institution; 1916.
- [16] Walzer M. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. N.Y.: Basic Book; 1977.

About the authors:

Chernyak Alexey Z. – CSc in Philosophy, Associate Professor, Department of Social Philosophy, Faculty of Humanities and Social Sciences, RUDN University, 6 Miklukho-Maklaya St., Moscow, 117198, Russian Federation. ORCID: 0000-0001-5654-7388. E-mail: cherniak-az@rudn.ru

Ivleva Marina L. – DSc in Philosophy, Professor, Head of the Department of Social Philosophy, Faculty of Humanities and Social Sciences, RUDN University, 6 Miklukho-Maklaya St., Moscow, 117198, Russian Federation. ORCID: 0000-0003-2901-7503. E-mail: ivleva_ml@pfur.ru

Сведения об авторах:

Черняк Алексей Зиновьевич – кандидат философских наук, доцент, кафедра социальной философии, факультет гуманитарных и социальных наук, Российский университет дружбы народов, Российская Федерация, 117198, Москва, ул. Миклухо-Маклая, д. 6. ORCID: 0000-0001-5654-7388. E-mail: cherniak-az@rudn.ru

Ивлева Марина Леонбертовна – доктор философских наук, профессор, кафедра социальной философии, факультет гуманитарных и социальных наук, Российский университет дружбы народов, Российская Федерация, 117198, Москва, ул. Миклухо-Маклая, д. 6. ORCID: 0000-0003-2901-7503. E-mail: ivleva_ml@pfur.ru